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**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF WASHINGTON**

In the Matter of the Application  
regarding the Conversion and  
Acquisition of Control of Premera Blue  
Cross and its Affiliates,

Docket No. G02-45

FOURTH ORDER: RULING ON  
MOTIONS TO INTERVENE

The organizations listed below have filed motions to intervene in the adjudicative hearing being conducted to review the proposal of Premera, a holding company, and certain of its affiliates to convert to for-profit entities. Premera, the Office of the Insurance Commissioner (OIC) Staff, and the petitioning interveners have filed memoranda on the issue of intervention, which I have considered. The petitioning interveners are as follows:

**Premera Watch Coalition**, which consists of Washington Citizen Action, Welfare Rights Organizing Coalition, American Lung Association of Washington, Northwest Federation of Community Organizations, Northwest Health Law Advocates, Service Employees International Union Washington State Council, The Children's Alliance, Washington Academy of Family Physicians, Washington Association of Churches, Washington Protection and Advocacy System, and Washington NOW;

**Washington Association of Community and Migrant Health Centers**, which represents 36 health care centers located in 24 Washington counties;

1       **The Hospital Associations**, which consists of the Washington State Hospital  
2 Association and the Washington Public Hospital Districts;

3       **University of Washington School of Medicine**, whose components consist of the  
4 School itself, University of Washington Medical Center, Harborview Medical Center, the  
5 Association of University Physicians d/b/a University of Washington Physicians, and the  
6 University of Washington Physicians Network;

7       **The Washington State Medical Association**, which consists of 8,800 members who  
8 provide healthcare services to Washington citizens;

9       **The University of Alaska**, which represents itself as one of the largest employers in  
10 Alaska whose health insurance is administered by Premera, and which, as an educational  
11 institution, provides degrees in healthcare-related occupations; and

12       **United Way of Anchorage, John Garner (a disabled individual), and Anchorage**  
13 **Neighborhood Health Center**, all of whom have expressed an interest in any proceeds that  
14 may result from a conversion for themselves or the individuals they serve.

15       Pursuant to RCW 48.31B.015(4)(b) and 48.31C.030(4), “any person whose significant  
16 interest is determined by the commissioner to be affected” by the proposed transaction “may  
17 present evidence, examine and cross-examine witnesses, and offer oral and written arguments,  
18 and in connection therewith may conduct discovery proceedings in the same manner as is  
19 allowed in the superior court of this state.” Premera objects to the intervention of the  
20 individual and organizations that have filed motions on the ground that they have not satisfied  
21 the legal standard for having a “significant interest.” In addition, Premera argues that  
22 intervention by multiple persons will impede the orderly operation of the hearing and unduly  
23 delay a decision in the matter. The OIC Staff does not oppose the motions to intervene, but  
24 suggests that certain conditions and limitations be placed on the interveners to ensure an  
25 efficient hearing. In particular, the OIC Staff suggests that the interveners be grouped in two  
26 classes, namely healthcare providers and healthcare consumers, with each group led by an

1 “attorney-in-charge.” The petitioning interveners generally agree to cooperate, but argue that  
2 the groupings suggested by the OIC Staff are too narrow and do not reflect the potential for  
3 conflicts of interest because of the divergent views of some of the interveners on certain  
4 issues.

5 For the reasons stated below, I am granting the motions to intervene; although,  
6 intervention will be subject to certain conditions and limitations. As discussed below, I have  
7 determined that the interveners represent significant interests that will be affected by a  
8 conversion of Premera. With respect to those interests, the interveners will offer information  
9 and a perspective that may very well differ from Premera and the OIC Staff. In addition, the  
10 interveners will bring a certain expertise relevant to their positions as providers and  
11 consumers of healthcare.

12 The bounds of intervention, however, are not limitless. The issues each intervener will  
13 be permitted to discover and offer evidence on are constrained by the following three  
14 requirements: (1) the issue must be relevant to the statutory criteria I am required to consider;  
15 (2) the issue must have been articulated by the intervener in its motion to intervene; and (3)  
16 the intervener must have established to my satisfaction that it can offer information or  
17 expertise different or beyond that being offered by Premera or the OIC Staff. In addition, I  
18 intend to enforce procedures for discovery and the hearing that will ensure a fair process, but  
19 also an efficient one that avoids redundancy and unnecessary delay.

20 In the interest of efficiency for all involved, I am requiring that the various interveners  
21 combine into five groups. Each group shall appoint a lead attorney who will speak and act for  
22 the group. Each group shall be treated as a single and separate party for the purposes of  
23 discovery, briefing, presentation of evidence, examination and cross-examination of  
24 witnesses, argument, and service of papers. The groups are as follows: (1) **Premera Watch**  
25 **Coalition**, which will include all of the organizations that filed a motion to intervene under  
26

1 that name and the Washington Association of Community and Migrant Health Centers;<sup>1</sup> (2)  
2 **The Hospital Associations**; (3) **Washington State Medical Association**; (4) **The Alaska**  
3 **Interveners**, which will include the University of Alaska, United Way of Anchorage, John  
4 Garner, and Anchorage Neighborhood Health Center; and (5) **The University of Washington**  
5 **School of Medicine**.<sup>2</sup>

6 At the outset, it may be useful to discuss some of the issues raised by the interveners  
7 that are not proper subjects for this proceeding. First, I will not consider whether any  
8 particular intervenor ultimately should be a recipient of proceeds from the conversion, should  
9 it be approved. Nor will this proceeding resolve the *specifics* of the mission and operation of  
10 any foundation created for the purpose of administering the proceeds of a conversion. It is the  
11 role of the Attorney General pursuant to the Nonprofit Corporation Act, ch. 24.03 RCW, to  
12 review a plan of distribution of the assets of a dissolving nonprofit corporation. Under the law  
13 the Attorney General must approve the transfer of any assets and is responsible for ensuring  
14 that those assets are used for the public benefit or charitable purposes as required by RCW  
15 24.03.225. My responsibility intersects with that of the Attorney General to the extent that I  
16 must ensure, if the conversion is approved, the fair value of the assets of the corporation is  
17 available to be used for those purposes defined by the law.

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18 <sup>1</sup> The Washington Association of Community and Migrant Health Centers and the  
19 Premera Watch Coalition, in the briefing filed on intervention, agreed to join together as an  
intervening group.

20 <sup>2</sup> It would appear that the University of Washington has a commonality of interest and  
21 perspective with The Hospital Associations. However, the entities that comprise The Hospital  
22 Associations recently filed an action in King County Superior Court against Premera. The  
23 complaint alleges that, because of past agreements between certain hospitals and Premera,  
Premera is not permitted to convert to a for-profit entity; and if it does, the proceeds of the  
24 conversion must inure to the benefit of those hospitals. It is unclear at this time what, if any,  
effect the lawsuit may have on these proceedings. It also appears possible that The Hospital  
25 Associations' interests may be adverse not only to Premera but also to the other interveners.  
The School of Medicine has represented that it plans to limit its participation and does not  
26 intend to conduct full discovery. Because of the potential conflict of interest and the  
University of Washington School of Medicine's limited participation, I am allowing it to stand  
on its own as an intervenor.

1 Furthermore, it should be noted that the interests of the **Alaska Interveners** relevant  
2 to this proceeding is limited by the authority and duties granted to me under Washington law.  
3 In their motions, the Alaska Interveners ask that this Washington proceeding be the forum to  
4 address and protect all of their interests that may be affected by a conversion. However, under  
5 Washington law my jurisdiction and statutory obligations may not extend to the outer limits of  
6 these interveners' interests. As the primary regulator of Premera, a domestic Washington  
7 company, I am responsible for ensuring that the company, regardless of the location of its  
8 business, is financially sound. As the Insurance Commissioner for the state of Washington, I  
9 am responsible for ensuring that Premera operates in accordance with this state's laws.  
10 Washington's Holding Company Act, chs. 31B and 31C RCW, gives me the responsibility to  
11 make sure the interests of Washington subscribers and the insurance-buying public are  
12 protected whenever there is an acquisition of a domestic carrier, as is occurring in this case  
13 through a conversion. While I am very interested in hearing from the Alaska Interveners how  
14 they believe a conversion may affect the operations of Premera and the health insurance  
15 market in Alaska, the interests of the Alaska Interveners and my statutory obligations may not  
16 always be coextensive. This proceeding cannot resolve for the Alaska Interveners issues that  
17 are unique to Alaska and do not come within my jurisdiction or obligations under Washington  
18 state law.

19 However, my statutory review does encompass issues that affect significant interests  
20 of the interveners. The interveners represent a broad range of persons who are either  
21 consumers or providers of healthcare. The intervenors represent institutional providers, such  
22 as hospitals and clinics, and individual providers, such as physicians. The consumer  
23 representatives include current Premera subscribers and individuals for whom health  
24 insurance is currently not available. The Premera Watch Coalition has stated that it will  
25 provide expert opinion on the impact of the conversion on healthcare generally. The Hospital  
26 Associations intend to represent their interests surrounding the problem of uncompensated

1 care its members are obligated to cover when insurance is not available. The Washington  
2 Physicians Association is concerned about reimbursement levels to providers from Premera,  
3 which could have an affect on the adequacy of provider networks serving the insured public.  
4 The Alaska Interveners interests are similar in nature to the other interveners; however, they  
5 will present information about the affects on the Alaska health insurance market that may be  
6 relevant to my review and will not be provided by another party.

7 Premera argues that the petitioning intervenors have not met the legal standard for  
8 intervention. The standard to be applied in this case is specifically set forth in the Holding  
9 Company Act (the “Act”), RCW 31B.015(4)(b) and 31C.030(4).<sup>3</sup> The Act gives me the  
10 authority to determine if a person’s significant interest is affected by an acquisition. If so, that  
11 person has the right to conduct discovery and participate in the hearing. The central question  
12 is what constitutes a “significant interest” under the Holding Company Act. There is no case  
13 that has interpreted this particular statutory language. The meaning of this phrase cannot be  
14 discerned in a vacuum. It must be considered in the context of the transaction being reviewed  
15 and the asserted interests of the persons seeking intervention.

16 The transaction under review is like no other that has been conducted under  
17 Washington’s Holding Company Act. The result of the acquisition is for Premera to convert  
18 from a nonprofit insurer to a publicly held for-profit insurer. It is acknowledged that Premera  
19 has a substantial part of the health insurance market in both Washington and Alaska and that it  
20 has existing contracts with a large percentage of the healthcare providers in both states.  
21 Furthermore, it is asserted by the interveners that, as a nonprofit insurer, Premera has played  
22 and could continue to play a unique role in providing insurance to segments of the population  
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24 <sup>3</sup> The Holding Company Act does not use the words “intervention” or “intervener.”  
25 The petitioners and the parties have adopted this nomenclature. For ease of reference I am  
26 using the same language employed by them. However, the petitioners’ and parties’ rights with  
respect to participation in this proceeding are governed by the language of RCW 31B.015(4)(b)  
and 31C.030(4).

1 that for-profit insurers avoid. If Premera retreats from some parts of the insurance market, as  
2 interveners allege could happen, interveners assert there will be an affect on the interests of  
3 those intervening organizations that provide healthcare services to the uninsured.<sup>4</sup>

4 RCW 48.31C.030 requires me to consider criteria that are relevant to the interests of  
5 the interveners in either maintaining or obtaining insurance and in having networks of  
6 providers available to provide the services covered by insurance. The legislature has directed  
7 me to consider, among other things, (1) whether the public will benefit from the economies of  
8 scale and resources that may occur as a result of the conversion, (2) whether the conversion  
9 will increase or prevent significant deterioration in the availability of health care coverage, (3)  
10 whether the future business plans of Premera are unfair and unreasonable to subscribers and  
11 not in the public interest, and (4) whether the conversion is likely to be hazardous or  
12 prejudicial to the insurance-buying public. On these issues, the interveners have established  
13 that they can present information, a perspective, and expertise different from or broader than  
14 that provided by the OIC Staff or Premera. They have satisfied me that their interests related  
15 to theses issues are significant; therefore, they should be allowed to participate in these  
16 proceedings.

17 All of the interveners, either expressly or by implication, also have indicated an  
18 interest in the valuation of the assets of Premera. Valuation appears to be relevant to the  
19 interveners' core concerns to the extent that there is a negative impact, if any, on the  
20 availability and affordability of health insurance as a result of the conversion. Any negative  
21 impact may be offset by the availability of conversion proceeds directed to the affected  
22 segments of the health insurance market. Theoretically, greater proceeds could result in a

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23 <sup>4</sup> I am not making any findings as to whether the petitioning interveners' allegations  
24 regarding Premera's possible future conduct or the consequences of a conversion are true. And  
25 even assuming they are true, I am not drawing any conclusion as to whether that would be  
26 cause to disapprove the conversion. The focus of the intervention analysis is whether the  
petitioners have significant interests that will be affected by the transaction that would allow  
them to participate in the proceedings under RCW 31.015(4)(b) and 31C.030(4).

1 greater opportunity to offset negative impacts. However, none of the interveners have shown  
2 that they possess any specialized expertise in valuation or intend to retain such expertise. The  
3 OIC Staff has retained an investment banker and accounting firm to address the issue of  
4 valuation and to prepare a report on the topic. The report will be made available to the  
5 interveners, as well as the public. In addition, the OIC Staff is conducting a financial  
6 examination of Premera, the results of which will also be made available. The interveners  
7 will be permitted to discover the bases of any opinions or conclusions of the OIC Staff and its  
8 experts on these issues, as well as the bases of any opinions or conclusions of Premera.  
9 However, I caution that on this issue I intend to place certain limitations on the interveners.  
10 Each intervening group is not going to be permitted to conduct its own financial examination  
11 of Premera. I am concerned that such an undertaking by each intervener group will unduly  
12 delay the review process without providing expertise or information beyond or different than  
13 what the OIC Staff will have spent considerable time developing.

14 **WHEREFORE**, it is this 10th day of February, 2003, **ORDERED**, that (1) Each  
15 intervener group identify a lead attorney and inform me and all parties of the name, address,  
16 telephone number, fax number, and e-mail address by February 13, 2003; (2) By February 21,  
17 2003, the lead attorneys will meet and discuss preparation of expert reports, a discovery  
18 schedule, discovery procedures, availability of documents, adjudicative hearing schedule, and  
19 any other matters the lead attorneys deem relevant to the hearing and its procedures; (3) On  
20 or before February 27, 2003, the lead attorneys shall submit to me a draft of a joint proposal  
21 addressing the matters in item 2. The draft should indicate where there is agreement by the  
22 lead attorneys and where there is not agreement; (4) On or before February 27, 2003, Premera  
23 and the OIC Staff shall submit a status report on the progress of the ongoing data and  
24 information collection; and (5) On March 3, 2003, a pre-hearing conference will be held at  
25 which all lead attorneys shall be present and prepared to discuss the draft joint proposal. The  
26 hearing will be held from 1:00 to 4:00 p.m. at the Tumwater City Council Chambers, City



1 Hall, 555 Israel Road, Tumwater, WA 98501. A pre-hearing order will be issued after the  
2 conference.

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5 MIKE KREIDLER,  
6 INSURANCE COMMISSIONER  
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